



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY - 4 2011

Brett G. Kappel, Esq.
Arent Fox LLP
1050 Connecticut Avenue, NW
Suite 400
Washington, DC 20036-5339

RE: MUR 6270
Rep. Ron Paul
Committee to Re-Elect Ron Paul, and
Lori Pyeatt, in her official capacity as treasurer

Dear Mr. Kappel:

On April 15, 2010, the Federal Election Commission notified your clients, Rep. Ron Paul and the Committee to Re-Elect Ron Paul, and Lori Pyeatt, in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time. On April 26, 2011, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Rep. Ron Paul or the Committee to Re-Elect Ron Paul, and Lori Pyeatt, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(b) or 441a(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which explain the Commission's finding, are enclosed for your information.

If you have any questions, please contact April J. Sands, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Mark Allen
Assistant General Counsel

Enclosures

Factual and Legal Analysis for Rep. Ron Paul and the Committee to Re-Elect Ron Paul, and Lori Pyeatt, in her official capacity as treasurer

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6270

RESPONDENTS: Rep. Ron Paul
Committee to Re-Elect Ron Paul and Lori Pyeatt, in her official
capacity as treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election
Commission by Johnathan C. Gay. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

The complaint alleges that the Rand Paul Committee failed to disclose excessive in-kind
contributions arising from coordinated communications in the form of email solicitations by
Rand Paul's father, U.S. Representative Ron Paul, and his authorized committee, the Committee
to Re-Elect Ron Paul, and Lori Pyeatt, in her official capacity as treasurer ("Re-Election
Committee").

Under the Federal Election Campaign Act of 1971, as amended ("Act"), no person may
make a contribution, including an in-kind contribution, to a candidate and his authorized political
committee with respect to any election for Federal office which, in the aggregate, exceeds
\$2,400, and no candidate or authorized political committee may accept such a contribution.
2 U.S.C. §§ 441a(a)(1) and (f); *see* 2 U.S.C. § 431(8)(A)(i), 11 C.F.R. § 100.52(d)(1).
See also 2 U.S.C. § 432(e)(3)(B) (no political committee which supports or has supported more
than one candidate may be designated as an authorized committee, except that the term "support"
here does not include a contribution by any authorized committee in amounts of \$2,000 or less to

1 an authorized committee of any other candidate). The Act defines in-kind contributions as,
2 *inter alia*, expenditures by any person “in cooperation, consultation, or concert, with, or at the
3 request or suggestion of, a candidate, his authorized political committees, or their agents.”

4 2 U.S.C. § 441a(a)(7)(B)(i). Treasurers of political committees are required to disclose all
5 contributions, including in-kind contributions. 2 U.S.C. § 434(b).

6 Commission regulations set forth a three-prong test to define when a communication is
7 coordinated. A communication is coordinated with a candidate or candidate committee when:
8 (1) the communication is paid for by a person other than that candidate, authorized committee or
9 agent thereof; (2) the communication satisfies at least one of the four “content” standards
10 described in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of the six
11 “conduct” standards described in 11 C.F.R. § 109.21(d).¹ 11 C.F.R. § 109.21(a). As discussed
12 below, it appears that none of the communications at issue met the content prong of the
13 coordinated communications test.

14 The complaint alleges that Rep. Ron Paul and the Re-Election Committee sent five
15 emails endorsing Rand Paul and soliciting contributions, which were coordinated with Rand Paul
16 and the Rand Paul Committee. *See* Complaint Exhibits B and C. The return address of the
17 emails is RonPaulForCongress.com and contains the disclaimer “Pol. Adv. Paid by the
18 Committee to Re-elect Ron Paul.” The Respondents deny that these communications were
19 coordinated. *See* Ron Paul response at 3; Rand Paul Committee response at 2-3.

¹ The activity in this matter occurred before the December 1, 2010 effective date of the Commission’s recent revisions to the coordination regulations. *See* Final Rules and Explanation and Justification, Coordinated Communications, 75 Fed. Reg. 55947 (September 15, 2010).

1 The content prong of the coordinated communications test includes: (1) an
2 “electioneering communication” defined at 11 C.F.R. § 100.29; (2) a “public communication” as
3 defined at 11 C.F.R. § 100.26 that disseminates campaign materials prepared by a candidate;
4 (3) a “public communication” that expressly advocates the election or defeat of a clearly
5 identified federal candidate; and (4) a “public communication” that refers to a clearly identified
6 candidate, is distributed 90 days or fewer before an election and is directed to a targeted
7 audience. 11 C.F.R. § 109.21(c). None of the five emails at issue satisfy the content prong
8 because none of them are either an “electioneering communication” or a “public
9 communication.” An “electioneering communication” is defined as a broadcast, cable or satellite
10 communication that refers to a clearly identified federal candidate and is distributed to the
11 relevant electorate 30 days before the primary election or 60 days before the general election.
12 2 U.S.C. § 434(f)(3); 11 C.F.R. § 100.29. Because the emails at issue did not employ any of
13 these forms of communication, they are not “electioneering communications.”

14 “Public communication” is defined as a communication by means of any broadcast,
15 cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass
16 mailing or telephone bank to the general public, or any other form of general public political
17 advertising, but excludes communications over the Internet, except for communications placed
18 for a fee on another person’s Web site. 11 C.F.R. § 100.26. Because the emails were sent via
19 the Internet, and the Commission has no information suggesting that they were placed for a fee
20 on another person’s website, they also are not “public communications.” As such, the emails do
21 not meet the content prong of the coordinated communications test. Accordingly, the

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1 Commission finds no reason to believe that Rep. Ron Paul or the Committee to Re-Elect
2 Ron Paul, and Lori Pyeatt, in her official capacity as treasurer, made and failed to disclose an
3 excessive contribution in violation of 2 U.S.C. §§ 441a(a) or 434(b), in connection with the
4 alleged coordinated communications.²

5 Related to the same five emails, the complaint alleges that the Re-Election Committee
6 made an undisclosed in-kind contribution because the Re-Election Committee used its mailing
7 list of potential supporters and contributors to send the emails. *See* Complaint at 3. In response,
8 the Rand Paul Committee states that it properly reported the use of the list as in-kind
9 contributions or as an outstanding debt. Rand Paul Committee response at 3. Disclosure reports
10 appear to confirm this statement.

11 The Rand Paul Committee's disclosure reports reflect the receipt of two in-kind
12 contributions of \$550 each for the rental of the Re-Election Committee's email list, on
13 October 1, 2009 and December 12, 2009, and an outstanding debt of \$4,600 owed for additional
14 rentals of the email list. Similarly, the Re-Election Committee's disclosure reports reflect the
15 making of two in-kind contributions of \$550 each for list rental by the Rand Paul Committee.
16 Accordingly, the Commission finds no reason to believe that the Committee to Re-Elect
17 Ron Paul, and Lori Pyeatt, in her official capacity as treasurer, made and failed to disclose an
18 excessive contribution in violation of 2 U.S.C. §§ 441a(a) or 434(b), in connection with the use
19 of the email list.

² We note that even if they had been coordinated, the emails appear to satisfy, with respect to Rep. Ron Paul, the safe harbor for coordinated contributions for solicitations and endorsements by one Federal candidate on behalf of another Federal candidate. *See* 11 C.F.R. § 109.21(g).